In the High Court of Uttaranchal, at Nainital.

Criminal Misc. Application No. 580 of 2006.

Smt. Rashmi Bangwal,
W/o Achlanand Bangwal,
R/o 1/1, Kishan Nagar Chowk,
Ballupur Road,
Dehradun, District Dehradun ...Applicant.

Versus

1- State of Uttaranchal

2- Smt. Meenu Kaushal (Sharma)
W/o Rohit Sharma,
R/o 22, Khurbura Mohallad,
P.S. Kotwali, Dehradun.
District Dehradun .... Respondents.

Sri Lokendra Dobhal, Advocate for the applicant.
Sri G.S. Sandhu, learned A.G.A. for the respondent/State.

Hon'ble B.C. Kandpal, J.

This petition U/S 482 Cr.P.C. has been filed by the petitioner who has been summoned by the court of Chief Judicial Magistrate, Dehradun for facing the trial U/S 138 Negotiable Instruments Act.

2- Brief facts of the case are that the respondent No.2 filed a complaint against the petitioner alleging therein that the petitioner/accused took a sum of Rs. 24,000/- from her with the assurance that the money shall be returned to the complainant. On demand for return of money by the complainant, a cheque was issued to her by the petitioner. The petitioner deposited the cheque in the Bank but it was dishonoured on 13-10-2004. Thereafter the complainant issued the notice to the petitioner on 21-10-2004 by registered post and U.P.C., which was received by the petitioner but even after the receipt of the notice the petitioner did not pay back the

amount to the petitioner, hence she filed the complaint against the petitioner on 23-11-2004.

3- The trial Judge after having considered the material available on record issued the summon to the petitioner for facing the trial U/S 138 Negotiable Instruments Act.

4- The petitioner has challenged the criminal proceedings of the aforesaid case by way of this petition.

5- Heard the learned counsel for the petitioner learned A.G.A. and perused the record.

6- The learned counsel for the petitioner has submitted before me that the complaint does not disclose that when the notice was served upon the petitioner, therefore, this compliant is barred by the provision of Section 138(c) of the Negotiable Instruments Act.

7- I fail to appreciate the argument advanced by the learned counsel for the petitioner. The complainant has averred in paragraph-6 of the complaint that the notice was sent to the petitioner on 21-10-2004 through registered post as well as U.P.C. which was received of the accused/petitioner, but in-spite of receipt of the notice, the accused did not pay back the amount to the complainant, therefore, she filed complaint on 23-11-2004.

8- In case if the petitioner, who is the accused in this case, submits that he did not receive the notice or in case if he had received the notice, even then the

complaint is barred by the provisions of Section 138(c) of the negotiable Instruments Act, then this burden lies on the shoulder of the petitioner who is facing the trial. The petitioner will have to establish before the trial Judge by adducting the cogent evidence that he infact did not receive the notice and in case if he has received the notice then on what date and as to whether the date on which the notice was received brings the case outside the ambit of Section 138(c) Negotiable Instruments Act. The petitioner would have, therefore, an opportunity to adduce the evidence in order to show before the trial Court that the complaint is barred by the provisions of Section 138(c) Negotiable Instruments Act.

9- At this stage I do not find any abuse process of the court. I am not supposed to embark upon the enquiry with regard to the credibility of the evidence on record. Any judgment rendered by me would amount to premature judgment, especially in the case where the evidence is to be adduced before the trial Judge, I am not supposed to record any finding, while exercising the jurisdiction U/S 482 Cr.P.C., adjudicating the disputed question of fact.

10- This petition lacks merit and is liable to be dismissed.

11- Accordingly the petition is dismissed.

(B.C.Kandpal, J.)

Dated: 26-7-2006
ISB